No. 82-1066

IN THE

Supreme Court of the United States

October Term, 1982

UNITED STATES OF AMERICA
Appellant,

v.

HARRY PTASYNSKI, et al.,
Appellees.

On Appeal from the United States
District Court for the
District of Wyoming

BRIEF OF UNITED STATES REPRESENTATIVE SILVIO O. CONTE AMICUS CURIAE

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A brief in support of appellant is submitted with the written consent of counsel to all parties filed with the Clerk of the Court.

INTEREST OF THE AMICUS CURIAE

Amicus, Congressman Silvio O. Conte, a Member of Congress in 1980 when the Windfall Profit Tax Act (Pub. L. No. 96-223, §§101-103, 94 Stat. 229-256 (1980)) was adopted, was a proponent of that measure during consideration by the House of Representatives (125 Cong. Rec. H5314 (daily ed. June 28, 1979); 126 Cong. Rec. H1070 (daily ed. Feb. 20, 1980)). Accordingly, Congressman Conte has an interest in insuring that the views and intent of those who supported this measure are thoroughly presented in litigation involving the constitutionality of the Windfall Profit Tax Act. Congressman Conte is also a Member of the present (98th) Congress, and serves as ranking minority member of the House Committee on Appropriations. If the decision of the

constituents represented by Congressman Conte. This brief is in support of the government's position on severability and does not address the issue of uniformity.

SUMMARY OF ARGUMENT

The applicable severability provisions of the Internal Revenue Code of 1954, traditional judicial deference to the judgment of legislative bodies in enacting revenue measures, and legislative intent as embodied in the legislative history of the Windfall Profit Tax Act, all support the conclusion that even if the Windfall Profit Tax Act does violate the uniformity clause of the United States Constitution, Article I, §8, cl. 1, the remainder of the Act should be severed and upheld. Appellees' reliance on the statements of opponents of the Act as a basis

United States District Court for the District of Wyoming, which would require the repayment by the government of some $78 billion plus interest in windfall profit tax revenues, is affirmed, Congress will have to resolve a number of serious financial problems. These would include providing for the repayment of the already collected windfall profit taxes and dealing with the resulting shortfall in federal revenue resources. Congressman Conte will be involved in attempting to solve the resultant financial chaos, both as a Member of Congress and as ranking minority member of the House Appropriations Committee.

Finally, affirmance of the lower court's opinion would necessitate taxing and/or spending decisions that would adversely affect the Western Massachusetts

for concluding that Congress intended that the Act in its entirety fail should a single provision of that Act be held unconstitutional is misplaced.

Failure to reverse the decision of the lower court concerning separability would result in governmental finanial chaos. Billions of dollars in collected revenues would have to be repaid and potential future revenues lost. Such a decision would require significant and immediate legislative corrective action, and would represent an unwarranted judicial intrusion into the legislative process. For these reasons the decision of the lower court on the issue of severability must be reversed.

ARGUMENT

I. STATUTORY AUTHORITY, JUDICIAL PRECEDENT, AND AUTHORITATIVE LEGISLATIVE HISTORY SUPPORT SEPARABILITY.

A. Statutory Authority Supports Separability

Section 7582(a) of the Internal Revenue Code of 1954 (26 U.S.C. § 7582) provides that "[i]f any provision of this title, or the application thereof to any person or circumstances, is held invalid, the remainder of the title, and the application of such provision to other persons or circumstances, shall not be affected thereby." Appellee State of Louisiana asserts that this separability provision should be read to preserve only the pre-existing provisions of the Internal Revenue Code, and is inapplicable to the separability of any single amendatory enactment, including the Windfall Profit Tax

Act (Motion to Affirm 15-16). The State of Louisiana would require that apparently all parts of such an Act, regardless of their diversity and their capability of severance, are to be viewed as a single provision and inseparable for constitutional purposes. The State of Louisiana cites no authority for this unique proposition. Subsequent legislative enactments do become a part of "this title" to which the provision applies. Nothing in Section 7582(a) suggests that the severable parts of an amending act are to be treated in a different manner than the severable parts of the original enactment. In fact, given the apparent randomness with which various provisions may be included by the Congress in one tax law or another, such an approach would be extremely unworkable. Indeed, Congress made

it clear that it intended even a single provision to survive where it could be constitutionally applied to some persons or circumstances but not to others. Section 7582(a) clearly applies to the separable provisions of the Windfall Profit Tax Act.

B. Judicial Precedent Supports Severability

Even in the absence of a separability provision this court has found that "[t]he cardinal principle of statutory construction is to save not to destroy." Tilton v. Richardson, 403 U.S. 672, 684 (1971) (plurality opinion), quoting N.L.R.B. v. Jones & Laughlin Steel Corp., 301 U.S. 1, 30 (1937). As this Court has recognized, saving rather than destroying is of particular importance when the severance of provisions in a revenue measure is

involved. Utah Power & Light Co. v. Pfost, 286 U.S. 165, 183-186 (1932); Field v. Clark, 143 U.S. 649, 696-697 (1892). The Windfall Profit Tax Act, which has raised billions of dollars in revenues, is clearly a revenue measure, as the District Court recognized in its opinion holding the entire tax invalid and inseparable. Ptasynski v. United States, 550 F. Supp. 549, 555 (D. Wyo. 1982).

As a revenue measure to which a severability provision applies, the severable provisions of that Act are entitled to a strong presumption of separability.

C. The Legislative History of the Windfall Profit Tax Act Supports Severability

The proposition that the revenue generating provisions of the Windfall Profit Tax Act are entitled to a presumption of

severability in this case is supported by the legislative history of the enactment. Questions as to the constitutionality of the tax were first raised during Senate consideration of the Conference Report. In response, the Chairman of the Senate Finance Committee, a conferee and the floor manager of the bill, Senator Long, asked for and received an opinion from the Office of Legislative Counsel on the question of severability (126 Cong. Rec. S2771, S2773-2774 (daily ed. Mar. 20, 1980); S2825-2828 (daily ed. Mar. 21, 1980)). That opinion concluded that the severability provision in Section 7582(a) of the Internal Revenue Code applied to the separable provisions of the Windfall Profit Tax Act. Thus, a presumption of divisibility existed. The other provisions were considered to be severable,

because the Alaskan exemption was at best a secondary legislative concern. The remaining provisions capable of enforcement should therefore remain intact even if the Alaskan exemption clause is held invalid. Legislative Counsel expressed the view that even absent a statement of specific Congressional intent, it was improbable that the judiciary would not sever the remaining provisions if the so-called Alaskan exemption were found invalid. The memorandum suggested that "[i]t would be desirable to have the record of the debates on the conference report ... reflect explicitly an understanding that the Congress does not intend for the validity of the windfall profit tax as a whole to depend upon the validity of the Alaskan oil exemption." (emphasis added)

126 Cong. Rec. S3056-S3057 (daily ed. Mar. 26, 1980). This was done by the floor manager in a statement which included the opinion. 126 Cong. Rec. S3055-S3057 (daily ed. Mar. 26, 1980).

Appellees urge that the statement of Senator Long should be treated as the expression of an individual Member entitled to little weight. Motion of the State of Louisiana to Affirm 18-19, Motion of the State of Texas to affirm 9; and Motion of Taxpayer and Association to Affirm 27.

However, judicial decisions have repeatedly given the views of committee chairmen, committee members, floor managers and conferees considerable weight in determining legislative intent. See, e.g., Train v. Colorado Public Interest Research Group, 426 U.S. 1, 11-23 (1976);

Bindczyck v. Finucane 342 U.S. 76, 83 (1951); Chicago, Milwaukee, St. P. & Pac. R.R. Co. v. Acme Fast Freight, 336 U.S. 465, 473-476 (1949); Duplex Printing Press Co. v. Deering, 254 U.S. 443, 474-477 (1921); see generally, 2A Sutherland Statutory Construction, §48.14 (4th ed. C. Sands 1973).

In the Chicago, Milwaukee, St. P. and Pac. R.R. Co. v. Acme Fast Freight, the Court gave greater weight to the unchallenged statement of the ranking minority member of the committee reporting the bill, a conferee who supported the measure, than to a contrary statement in the committee report. 336 U.S. at 473-476. In Duplex Printing Press Co. v. Deering the Court's opinion treated the House floor manager's statement as a supplement to the

committee report in expressing legislative intent, saying:

> By repeated decisions of this court it has come to be well established that the debates in Congress expressive of the views and motives of individual members are not a safe guide, and hence may not be resorted to, in ascertaining the meaning and purpose of the lawmaking body. Aldridge v. Williams, 3 How. 9, 24; United States v. Union Pacific R.R. Co., 91 U.S. 72, 79; Binns v. United States, supra; Pennsylvania R.R. Co. v. International Coal Co., 230 U.S. 184, 198-199; United States v. Coca Cola Co., 241 U.S. 265, 281; United States v. St. Paul, Co., 247 U.S. 310, 318. (254 U.S. at 474-475). (emphasis added)

A similar view is expressed in 2A Sutherland Statutory Construction §48.14:

> When a bill is reported out of a standing committee, the member of the committee in charge of the bill, normally the chairman, explains its meaning to the house and in the ensuing debate answers questions as to the meaning of particular sections or phrases. As the committeeman in charge

> has the duty of defending the bill, he has familiarized himself with the situation sought to be remedied by the bill and his statements may be taken as the opinion of the committee as to what is meant by the bill.

In his statement Senator Long clearly indicated that he is speaking as floor manager and conferee in using such phrases as "intent of Congress", "our intent", and "our thought". 126 Cong. Rec. S3056 (daily ed. Mar. 26, 1980). Nowhere in the statement is there any indication that he had set aside his role as spokesman for the committee and conference to state his views as an individual member. Senator Long's remarks on severability clearly represented his position for the record of the statement of specific intent on the Alaskan severability issue, as recommended by the Office of Legislative Counsel and in the manner recommended by that

Office. Further, Senator Long's statement was unchallenged.

The argument that encouraging domestic production was one of the goals of Congress in enacting the statute in question and that the Alaskan oil exemption was designed to encourage domestic production (Motion of the State of Louisiana to Affirm 18; Motion of State of Texas to Affirm 10-11; Motion of Taxpayer and Association to Affirm 23-24) contains no evidence of a specific legislative intent that the entire tax survive or fall with the constitutionality of the Alaskan exemption. That exemption was one of several incentives for domestic production. Others included special windfall tax treatment for tertiary oil, newly discovered oil, heavy oil, and independent producers. 26 U.S.C. §4987-4994. If the Alaskan

exemption were severed, these incentives would remain and, as Senator Long noted in his statement, oil in the exempt areas of Alaska would be treated as new oil and taxed at a lower rate, certainly an inducement to production although not as great an inducement as a total exemption from taxation. 126 Cong. Rec. S3056 (daily ed. Mar. 26, 1980). Appellees cannot overcome the specific and authoritative statements of the floor manager by a recitation of generalizations of the type that might be made about any provision in any legislation during the course of its consideration by Congress. Legislative provisions are discussed and reasons given for their inclusion as a general practice, but it would be entirely inappropriate to rely on such generalities, when contradicted by a specific,

authoritative, and unchallenged statement by the measure's floor manager clearly supporting a conclusion of severability.

Considerable attention is giver by appellees to the statements of Senator Stevens of Alaska, an opponent of the Windfall Profit Tax Act. Motion of Taxpayer and Association to Affirm 26-27; Motion of the State of Texas to Affirm 9-10. Generally, the views of opponents of a measure are given little probative effect as opposed to the stated views or the silence of supporters of a measure. National Woodwork Mfrs. Ass'n. v. N.L.R.B., 386 U.S. 612, 639-640 (1967); N.L.R.B. v. Fruit & Vegetable Packers, 377 U.S. 58, 66 (1964); Mastro Plastics Corp. v. N.L.R.B., 350 U.S. 270, 288 (1956); Schwegmann Bros. v. Calvert Distillers Corp., 341 U.S. 384,

394-395 (1951). Reliance on the statements of Senator Stevens and other opponents of the measure would not be justified even in the absence of a definitive statement by the bill's floor manager.

II. FAILURE TO SEVER WOULD CREATE FINANCIAL CHAOS AND CONSTITUTE JUDICIAL LEGISLATION

Appellees have urged that the judiciary would be making legislative policy decisions should it hold that the remaining provisions of the Windfall Profit Tax Act are severable from the Alaskan oil exemption. Motion of the State of Louisiana to Affirm 20-22; Motion of the State of Texas to Affirm 11-12. In fact, as decisions of this Court clearly suggest, the reverse is true when revenue measures are involved. "Unless it be impossible to avoid it, a general revenue statute should never be declared inoperative in all its

parts because a particular part relating to a distinct subject may be invalid. A different rule might be disastrous to the financial operations of the government, and produce the utmost confusion in the business of the entire country." Field v. Clark, 143 U.S. at 696-697. Failure to sever the revenue provisions in this case would require repayment of many billions of dollars in collected taxes and require the government to forego the potential availability of additional revenues. Congress would be faced with the need to borrow additional funds in the face of a deficit that already threatens to approach $200 billion in fiscal 1983, reduce appropriations to many programs in order to make up the shortfall or find additional revenue sources. It would be a disaster to the financial operations of the

government. "We find no warrant for concluding that the legislature would have been content to sacrifice an important revenue statute in the event that relief from its burdens in respect of particular individuals should become ineffective." Utah Power & Light Co. v. Pfost, 286 U.S. at 185.

Acceptance of the arguments and evidence of legislative intent urged by appellees would have a potentially disastrous effect on the legislative process. Such acceptance would give substantial credence to general and common reasons for the inclusion of particular legislative provisions, and to statements and actions of the opponents of measures in determining such intent. Proponents might be discouraged from giving any reasons in support of particular provisions and

opponents encouraged to say anything and everything in opposition to the bill in anticipation of a possible constitutional or other legal challenge.

CONCLUSION

The judgment of the United States District Court for the District of Wyoming on the issue of severability should be reversed.

Respectfully submitted,

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